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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SARAH ELIZABETH ALEXANDER, an
individual; ROBERT ROY ALEXANDER,
an individual,

Plaintiffs,

vs.

COSTCO WHOLESALE CORPORATION
dba Costco, a Foreign Corporation; VALLEY
CONTAX INC., DOES I-X; and ROE
BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Case No.: 2:21-cv-00509-APG-VCF

**STIPULATION AND ORDER TO
EXTEND DISCOVERY PLAN AND
SCHEDULING ORDER**

(THIRD REQUEST)

Defendants Valley Contax Inc., by and through their counsel of record Alan W. Westbrook, Esq. of Perry & Westbrook, A Professional Law Firm, and Plaintiffs Sarah Elizabeth Alexander (referred to herein as “Mrs. Alexander”) and Robert Roy Alexander (referred to herein as “Mr. Alexander”), by and through counsel, Bradley Mainor, Esq. and Ash Marie Blackburn, Esq. of the Mainor Wirth law firm, and Defendants, Costco Wholesale Corporation (hereinafter referred to as

1 “Costco”), by through counsel, Edgar Carranza, Esq. of the law firm Backus, Carranza & Burden,
2 hereby submit the instant stipulation and order to extend the Discovery Plan and Scheduling Order
3 pursuant to Local Rule II 26-4 as follows:

4 **I. GOOD CAUSE SUPPORTING THE EXTENSION.**

5 The parties come to this Court seeking a third extension of the Discovery Plan and
6 Scheduling Order governing this product liability/personal injury case. The parties have begun to
7 diligently move this case forward but significant discovery remains to be completed which
8 warrants the requested extension.
9

10 **A. SUMMARY OF EFFORTS THUS FAR.**

11 As this Court is well aware, this lawsuit involves allegations that Plaintiff, Sarah Elizabeth
12 Alexander (referred to herein as “Mrs. Alexander”) suffered serious injuries to her eye after
13 wearing prescription contact lenses, which were distributed by Valley Contax and purchased from
14 Costco, as the result of an unspecified defect with the lenses.

15 On October 28, 2021, Plaintiffs filed their Complaint against Costco and Valley Contax
16 with the Eighth Judicial District Court for Clark County, Nevada. On February 17, 2021, Costco
17 filed its Answer denying Plaintiffs’ allegations and denying all liability for the injuries. On
18 February 18, 2021, Valley Contax filed its Answer denying Plaintiffs’ allegations and denying all
19 liability for the injuries claim.

20 On March 9, 2021, Plaintiffs filed their Request for Exemption from Arbitration in which
21 they outlined their claimed injuries and alleged damages. On March 29, 2021, Costco filed its
22 Notice of Removal and removed the matter to this Court based on diversity jurisdiction. On April
23 13, 2021, Costco filed its Statement Regarding Removal. The parties participated in the Fed. R.
24 Civ. P. 26(f) conference on April 14, 2021, and filed their proposed Joint Discovery Plan and
25 Scheduling Order which was entered by this Court on April 28, 2021.

26 On April 28, 2021, Plaintiff served their Initial Disclosure of Witness and Production of
27 Documents Pursuant to FRCP 26(a)(1). On May 10, 2021, Defendant Costco served their Initial
28

1 Disclosure of Witness and Production of Documents Pursuant to FRCP 26(a)(1). On June 10, 2021,
2 Defendant Valley Contax served their Initial Disclosure of Witness and Production of Documents
3 Pursuant to FRCP 26(a)(1). Parties have exchange their respective Fed. R. Civ. P. 26 Disclosures.
4 In the interim, the parties have been engaged in discovery. The parties served a first set of written
5 discovery requests to each other some of which have been responded to. At the same time,
6 Plaintiffs' medical records are being secured independently directly from the health care providers.
7 As they are being produced, supplemental disclosures are being served to provide the records to
8 all parties.
9

10 Plaintiffs deposed Karen Crawford (Optical Manager) on January 19, 2022, Aaron
11 Whitaker (Optician at Costco) on January 25, 2022, Max Ramos (General Manager at Costco) on
12 June 9, 2022, and Edgar Retana (Security Assurance Manager of Dynatec Laboratories) on July
13 12, 2022.

14 Mrs. Alexander's deposition went forward on July 1, 2022. Mr. Alexander's deposition
15 was also set to take place on July 1, 2022 but had to be continued due to the length of Mrs.
16 Alexander's deposition. The parties are in the process of rescheduling Mr. Alexander's deposition.

17 The parties are working to schedule the deposition of Robert Ahern, Rule 30(b)6 witness
18 for Valley Contax, after they conduct an inspection of the right contact. It is anticipated that said
19 inspection will take place on September 26, 2022 in California. Plaintiff's counsel is personally
20 delivering the subject contact lens to Defendant's expert in California. Depending on the results
21 of the initial inspection, destructive testing may also be necessary at another location in California.

22 The deposition of Plaintiff's treating physician, Dr. Eric Brooker is currently set to take
23 place on September 7, 2022. The parties are coordinating expert witnesses and anticipate taking
24 depositions of some or all experts following their designations.

25 **B. GOOD CAUSE.**

26 The shut down and subsequent limitations brought on by the COVID 19 pandemic initial
27

1 led to some delays in the parties' respective ability to participate in the deposition process. In
2 addition, counsel for Plaintiffs also was temporarily unavailable due to her maternity and the
3 subsequent new addition to her family.

4 Since those initial delays, the parties have diligently deposed the parties and witnesses
5 involved. They are actively working to schedule an inspection, and potentially, destructive testing,
6 to take place at different locations in California. The parties have hired experts and are gathering
7 evidence to disclose their reports. Depositions of fact witnesses, Plaintiff's medical providers, and
8 the experts will still need to take place. This is anticipated to take at least a couple of months, but
9 necessary to prepare this case for trial or potential resolution.
10

11 Moreover, this is a significant personal injury matter that has and will continue to require
12 significant effort by both parties. Plaintiff has already identified significant past medical expenses,
13 unknown future medical expenses estimated to amount to \$100,000, loss of enjoyment of life in
14 the amount of \$1,000,000, past pain and suffering in the amount of \$1,500,000 and future pain
15 and suffering in the amount of \$2,500,000, to name some of the damage components identified
16 thus far. Significant effort will be required to address each of the damage components, and the
17 liability portion of this case.

18 **II. DISCOVERY COMPLETED TO DATE.**

19 In accordance with LR II 26-4(a), the Parties provide the following statement of discovery
20 completed to date:

21 **A. Plaintiff's Discovery.**

- 22 1. Plaintiffs' FRCP 26 initial disclosures served 04-20-21.
- 23 2. Plaintiffs' First Supplement to FRCP 26 initial disclosures served
24 on 07-20-21.
- 25 3. Plaintiff, Sarah Alexander's Answers to Costco's First Set of Interrogatories
26 served on 07-23-21.
- 27 4. Plaintiff, Sarah Alexander's Responses to Costco's Request for Production
28

1 served on 07-23-21.

2 5. Plaintiff, Robert Roy Alexander's Answers to Costco's First Set of
3 Interrogatories served on 07-23-21.

4 6. Plaintiff, Robert Roy Alexander's Responses to Costco's Request for
5 Production served on 07-23-21.

6 7. Plaintiffs' Second Supplement to FRCP 26 initial disclosures served
7 on 08-25-21.

8 8. Plaintiffs' Third Supplement to FRCP 26 initial disclosures served
9 on 09-02-21.

10 9. Plaintiffs' First Set of Requests for Production to Valley Contax served
11 on 11-15-21.

12 10. Plaintiff's First Set of Interrogatories to Defendant Valley Contax, served
13 on 11-16-21.

14 11. Plaintiffs' Fourth Supplement to FRCP 26 initial disclosures served
15 on 11-22-21.

16 11. Plaintiffs' First Set of Interrogatories to Costco served on 11-23-21.

17 12. Plaintiff's Fifth Supplement to FRCP 26 initial disclosures served
18 on 12-10-21.

19 13. Plaintiff noticed the deposition of Aaron Whitaker on 12-14-21.

20 14. Plaintiff noticed the deposition of Karen Crawford on 12-14-21.

21 15. Plaintiff Answers to Defendant Valley Contax's First Set of Interrogatories
22 served on 2-18-22.

23 16. Plaintiff Responses to Defendant Valley Contax's First Set of Production of
24 Documents served on 2-18-22.

25 17. Plaintiff Responses to Defendant Valley Contax's First Set of Request for
26 Admissions served on 2-18-22.

1 18. Plaintiff noticed the deposition of Max Ramos on 4-11-22.

2 18. Plaintiffs' Sixth Supplement to FRCP 26 initial disclosures served
3 on 5-23-22.

4 20. Plaintiff noticed the deposition of Robert Ahern on 6-8-22.

5 21. Plaintiff noticed the deposition of Edgar Retana on 6-9-22.

6 22. Plaintiff amended the noticed deposition of Robert Ahern on 6-17-22.

7 23. Plaintiff amended the noticed deposition of Edgar Retana on 6-20-22.

8 24. Plaintiff vacated the noticed deposition of Robert Ahern on 6-22-22.

9 25. Plaintiffs' Seventh Supplement to FRCP 26 initial disclosures served
10 on 6-22-22.

11 26. Plaintiffs' Eighth Supplement to FRCP 26 initial disclosures served
12 on 6-30-22.

13 27. Plaintiff's First Set of Requests for Production of Documents to Defendant
14 Costco served on 7-7-22.

15 28. Plaintiffs' Ninth Supplement to FRCP 26 initial disclosures served
16 on 8-18-22.

17
18 B. Costco's Discovery.

19 1. Costco's FRCP 26 initial disclosures served 05-10-21.

20 2. Costco's First Set of Interrogatories to Plaintiff, Robert Roy Alexander
21 served 05-12-21.

22 3. Costco's First Set of Requests for Production to Plaintiff, Robert Roy
23 Alexander served 05-12-21.

24 4. Costco's First Set of Interrogatories to Plaintiff, Sarah Alexander
25 served 05-12-21.

26 5. Costco's First Set of Requests for Production to Plaintiff, Sarah Alexander
27 served 05-12-21.

1 6. Custodian of records depositions were set for various health care providers
2 on 08-17-21.

3 7. Costco's First Supplement to FRCP 26 disclosures served on 10-04-21.

4 8. Costco's Answers to First Set of Interrogatories from Plaintiff, served
5 on 1-14-22.

6 9. Costco's Offer of Judgment to Plaintiff served on 3-28-22.

7
8 C. Valley Contax's Discovery.

9 1. Valley Contax's FRCP 26 initial disclosures served on June 9, 2021.

10 2. Valley Contax's First Set of Interrogatories to Plaintiff, Sarah Alexander
11 on 12-30-21.

12 3. Valley Contax's Request for Production of Documents to Plaintiff, Sarah
13 Alexander on 12-30-21.

14 4. Valley Contax's Request for Admissions to Plaintiff, Sarah Alexander
15 on 12-30-21.

16 5. Valley Contax's First Supplement to FRCP 26 initial disclosures served
17 on 1-28-22.

18 6. Valley Contax's Answers to Plaintiff Sarah Alexander's First Set of
19 Interrogatories, served on 1-31-22.

20 7. Valley Contax's Responses to Plaintiff Sarah Alexander's First Set of Request
21 for Production of Documents, served on 1-31-22.

22 8. Valley Contax Second Supplement to FRCP 26 initial disclosures served
23 on 2-11-22.

24 9. Valley Contax's Third Supplement to FRCP 26 initial disclosures served
25 on 5-19-22.

26 10. Valley Contax noticed the deposition of Mr. Alexander on 6-16-22.

27 11. Valley Contax noticed the deposition of Mrs. Alexander on 6-16-22.

12. Valley Contax's Fourth Supplement to FRCP 26 initial disclosures served on 6-29-22.

13. Valley Contax's Fifth Supplement to FRCP 26 initial disclosures served on 7-22-22.

14. Valley Contax noticed the deposition of Dr. Eric Brooker on 7-29-22.

III. DISCOVERY REMAINING TO BE COMPLETED.

In accordance with LR II 26-4(b), the Parties provide the following statement of discovery remaining to be completed:

1. Inspection, and potentially, destructive testing of subject contact lens on September 26, 2022;
2. Deposition of Costco's Rule 30(b)6 witness;
3. Deposition of Valley Contax's Rule 30(b)6 witness, Robert Ahern;
4. Deposition of Plaintiff's treating provider, Dr. Eric Brooker, currently scheduled for September 7, 2022;
5. Depositions of Plaintiff's treating providers;
6. FRCP 35 Medical Examination of Plaintiff;
7. Initial expert designations;
8. Rebuttal expert designations;
9. Depositions of Initial and Rebuttal Experts.

IV. WHY REMAINING DISCOVERY HAS NOT BEEN COMPLETED.

This is a complicated and complex product defect case. As referenced above, initially, the limitations related to the COVID 19 pandemic led to some delays and conflicts with counsels' availability/schedule. Nonetheless, good faith efforts were made by both parties to meet the obligations required of all parties.

Once the parties embarked on discovery, they have been able to move this matter forward

with the appropriate diligence. As detailed above, significant discovery has been completed including the exchange of initial disclosures, completion of multiple waves of written discovery, fact and party depositions, securing independent copies of Plaintiffs' medical records, and scheduling an inspection.

As coordinating the necessary inspection of the subject contact lens requires availability of multiple counsels' offices, as well as their respective experts, to travel out of state, the parties were met with an unavoidable delay due to the lack of mutually available dates. This inspection is scheduled to take place on September 26, 2022 in California.

All counsels had trials take place in August; therefore, all discovery anticipated during that time had to be postponed.

The deposition of Dr. Eric Brooker is currently set to take place on September 7, 2022.

The deposition of Robert Ahern/Rule 30(b)6 witness for Defendant Valley Contax is in the process of being scheduled

The parties' experts also need to have available the deposition testimony of some of the providers in order to render a comprehensive opinion of their respective areas of expertise.

V. PROPOSED SCHEDULE FOR COMPLETING DISCOVERY.

This request for an extension of time is not sought for any improper purpose or other purpose of delay. The parties respectfully submit that this constitutes good cause for the extension. The following is a list of the current discovery deadlines and the parties' proposed extended deadlines.

<u>Scheduled Event</u>	<u>Current Deadline</u>	<u>Proposed Deadline</u>
Discovery Cut Off	December 26, 2022	April 5, 2023
Amend Pleadings/Add Parties	September 26, 2022	January 4, 2023
Initial Expert Disclosures	September 26, 2022	January 4, 2023
Rebuttal Expert Disclosures	November 28, 2022	March 8, 2023
Dispositive Motions	January 23, 2023	May 3, 2023
Joint Pre-Trial Order	February 22, 2023	June 2, 2023

This is the third request for extension of time in this matter and no trial date will be impacted by the extension as no such trial date has been set.

The parties submit that the reasons set forth above constitute good cause for the requested extension.

Dated this 1st day of September, 2022.
PERRY & WESTBROOK
A Professional Corporation

/s/Alan W. Westbrook
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Attorney for Defendant Valley Contax Inc.

Dated this 1st day of September, 2022
BACKUS, CARRANZA & BURDEN

/s/Edgar Carranza
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Attorney for Defendants, Costco Wholesale

Dated this 1st day of September, 2022
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/s/Ash Marie Blackburn
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*Attorney for Plaintiffs, Sarah Elizabeth Alexander
and Robert Roy Alexander*

IT IS SO ORDERED...

DATED this September 19, 2022.


UNITED STATES MAGISTRATE JUDGE